

**AN ORDINANCE TO AUTHORIZE AN ELECTRICITY PROCUREMENT
CONTRACT STARTING IN FY 2011**

#3364

Sponsors:

Council
Members
Freel
Potter

WHEREAS, pursuant to Section 2-308 and Section 8-200 of the Charter, the City of Wilmington is authorized to enter into contracts for the supply of property or the rendering of services for more than a period of one year if approved by City Council by ordinance; and

WHEREAS, pursuant to City Ordinance No. 09-030, the City entered into a Guaranteed Energy Performance Contract ("GEPC Contract") with Honeywell Building Solutions SES in June 2009 for construction of energy conservation measures ("ECMs") at City facilities and these ECMs require a specific type of electricity procurement; and

WHEREAS, pursuant to City Ordinance No. 09-030, the City entered into a contract in June 2009 with Enstrat Analytics, LLC, a company that specializes in electricity procurement, to assist the City in the selection process for an electricity provider starting in FY 2011 for a term of up to four (4) years; and

WHEREAS, through a multi-stage competitive request for proposal process, the City, with the assistance of Enstrat, has selected a "short list" of three (3) electricity providers; and

WHEREAS, the City must enter into a contract with an electricity provider significantly in advance of July 1, 2010 and such contract will be for a term of 1, 2, 3 or 4 years, depending on the results of the last stage of the electricity provider selection process; and

WHEREAS, the last stage of the electricity provider selection process requires the City to select one of the three "short-listed" providers within a matter of hours after being provided with the exact price and length provisions of the contract precluding the ability of City Council to approve a single final contract in advance. Therefore, the Department of Public Works has negotiated draft contracts with each of the three "short-listed" providers, excluding the exact price and length provisions, and submits these three contracts, attached hereto in substantially complete form, to Council for approval in advance of the final stage of the process to select an electricity provider.

THE COUNCIL OF THE CITY OF WILMINGTON HEREBY ORDAINS:

SECTION 1. The three negotiated draft contracts with the short-listed electricity providers, excluding price and length provisions, attached hereto in substantially complete form, are hereby approved by City Council. The Department of Public Works is given the authority to execute one of the contracts based on the results of the last phase of the selection process whereby exact price and length provisions are provided and the Department of Public Works must select an electricity provider within a matter of hours. The Commissioner of the Department of Public Works is hereby authorized and directed to execute as many copies of one of the three contracts, as well as all additional undertakings related thereto, as may be necessary.

SECTION 2. This ordinance shall be deemed effective upon its date of passage by City Council and approval of the Mayor.

First Reading. May 6, 2010
Second Reading. May 6, 2010
Third Reading. May 13, 2010

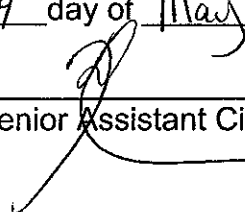
Passed by City Council, May 13, 2010



President of City Council 5/13/10

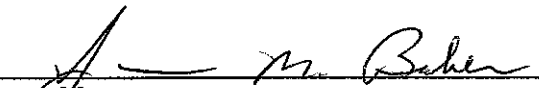
ATTEST: 

Acting Deputy City Clerk

Approved as to form this
4 day of May, 2010


Senior Assistant City Solicitor

Approved this 17th day of May, 2010



Mayor

SYNOPSIS: This ordinance authorizes the City to enter into one of three negotiated draft contracts with the three short-listed electricity providers starting in FY 2011 for a term of up to four (4) years.

Integrys Energy Services, Inc.

POWER SALE AGREEMENT

This Power Sale Agreement ("Agreement"), dated as of 4/15/2010 (the "Effective Date"), is made by and between Integrys Energy Services, Inc. ("Seller") and City of Wilmington ("Buyer"). Seller and Buyer are hereinafter sometimes referred to individually as "Party" and collectively as "Parties". Capitalized terms used herein will have the meanings ascribed to them herein or in any Rider or Confirmation.

I. PRICE, QUANTITY, DELIVERY POINT, SERVICE LEVEL, AND DELIVERY PERIOD

Seller agrees to sell and schedule for delivery, and Buyer agrees to purchase and receive electric power at the Delivery Point, in a Quantity, at a Price, and for a Delivery Period as provided on any effective Confirmation, in a form substantially similar to that of Exhibit A, executed by both Parties. Electric power shall be provided on a Firm basis. "Firm" means that either Party shall be relieved of its obligations to sell and schedule or purchase and receive without liability only to the extent prevented by Force Majeure. In the absence of Force Majeure, the Party to whom performance is owed shall be entitled to receive an amount from the other Party as determined in accordance with Article VI(B) below. If no effective Confirmation is in effect, there shall be no obligation to sell and schedule or purchase and receive electric power under this Agreement.

II. TERM

This Agreement shall commence as of the date first written above and remain in effect, subject to termination rights provided for herein, until terminated by either Party in a manner that is not inconsistent with an effective Confirmation. Notwithstanding the Effective Date of this Agreement, the obligation to provide and receive electric power shall be in accordance with the Delivery Period designated on any effective Confirmation.

III. CHANGES IN TARIFF OR LAW

Seller's charges include tariff charges that are authorized by the applicable RTO/ISO (e.g. Midwest Independent System Operator, New York Independent System Operator, PJM Interconnection or ISO New England) and/or the Federal Energy Regulatory Commission ("FERC") or any other state or governmental agency having jurisdiction. Seller may pass through to Buyer (i) any increase or decrease in such tariff charges or (ii) other increase or decrease in Seller's cost to provide electric power that result from a change in or change in interpretation or administration of current tariffs, laws, regulations, or other requirements of a utility, RTO/ISO, FERC, or other transmission providers, as applicable. Any such addition to or increase in costs shall be Buyer's obligation.

IV. BILLING AND PAYMENT

A. Utility Single Bill Billing

If an effective Confirmation indicates that 'Utility Single Bill Billing' will apply, Buyer will be invoiced for Seller's charges through the utility (ies) on the invoice(s) Buyer receives from its utility(ies), and such billing and payment shall be subject to the applicable utility rules regarding billing and payment procedures.

B. Seller Billing

If an effective Confirmation indicates that 'Seller Billing' will apply, Buyer will be invoiced by Seller for all amounts payable by Buyer through the last day of the billing cycle. Seller's invoice may be sent to the

address (or facsimile number or e-mail address, as applicable) listed on an effective Confirmation. Seller may invoice Buyer based upon the estimated quantity delivered, which will then be adjusted to the actual quantity on a subsequent invoice. Buyer shall make payments according to invoice instructions and shall pay invoices over \$50,000 by wire transfer. Buyer shall remit the amount due on or before 10 calendar days after the invoice date ("Due Date"). Payments not received by the Due Date are deemed past due and shall accrue interest on the unpaid balance from the due date until payment is received at a rate of 1.5% ("Interest Rate") of the unpaid balance, per month. If Buyer, in good faith, disputes the amount of any invoice, Buyer shall pay such amount as it concedes to be correct by the Due Date and, along with its payment, provide Seller with documentation to support the amount disputed. Upon determination of the correct amount, any amount owed shall be paid within 15 calendar days of resolution of the dispute with interest at the Interest Rate. All invoices and billings are conclusively presumed final and accurate unless such invoices or billings are objected to by either Party in writing, including adequate explanation and/or documentation, within 24 months after the date such invoice was rendered, provided however, Seller may rebill based on post-period adjustments made by the RTO/ISO and/or the applicable utility. Any and all adjustments under this Section shall be paid in full by the owing Party within 30 calendar days after the invoice date for such charges.

C. Seller Single Bill Billing

If an effective Confirmation indicates that 'Seller Single Bill Billing' will apply, then Seller shall invoice Buyer for Seller's charges and the utility's delivery charges, and such billing and payment shall be subject to IV(B) above.

D. Taxes

Any tax levied against Seller by any governmental entity, exclusive of Seller's income tax or taxes levied on Seller's real or personal property, that must be paid by Seller shall be passed through to and borne and reimbursed by Buyer. If Seller does not receive a signed certificate(s) of exemption, Seller is required by law to levy sales tax on its invoices to Buyer, and remit the money to the appropriate authority.

E. Other

Termination of this Agreement by either Party shall not relieve the other Party from an obligation under this Agreement to pay money due that was incurred prior to termination.

V. ADEQUATE ASSURANCE

Buyer (i) agrees to provide Seller with required information, including pertinent financial information and other information required for Seller to assess Buyer's financial position, and (ii) authorizes the applicable utility, credit reporting agencies, trade references, and other relevant parties to release data to Seller relating to Buyer's billing, usage, and credit data with such

Neither Party shall be considered to be in default in the performance of its obligations under this Agreement if its ability to perform was prevented by Force Majeure. For purposes of this Agreement, Force Majeure means an event which prevents one Party from performing its obligations hereunder, which event was not i) within the reasonable control of, or ii) the result of the negligence of, the claiming Party, and which, by the exercise of due diligence, the claiming Party is unable to overcome or avoid. Force Majeure shall include, without limitation: a condition resulting in the curtailment of power supply or interruption or curtailment of transmission on the electric transmission and/or distribution system; restraint by court order; and action or non action by, or inability to obtain necessary authorizations or approvals from any government agency or authority. Force Majeure shall not include loss or failure of either Party's markets or supplies. Force Majeure shall not excuse Buyer's failure to make payments in a timely manner for electricity supplied by Seller before a Force Majeure event. The claiming Party must provide the other Party with written notice of the Force Majeure as soon as practicable, which notice shall contain reasonably full particulars of the Force Majeure, including the estimated duration.

IX. NOTICES

All notices required pursuant to this Agreement may be sent by facsimile, a nationally recognized overnight courier service, first class mail, certified mail return receipt requested, or hand delivery, in accordance with the information provided in any effective Confirmation. Notice shall be deemed effective when received, if received on a business day during recipient's normal business hours. If not received on a business day, or if received after normal business hours on a business day, then notice shall be deemed effective as of the next business day. Subject to the foregoing, in the absence of proof of the actual receipt date, the following presumptions will apply. Notices sent by facsimile shall be deemed received upon the sending Party's receipt of its facsimile machine's confirmation of successful transmission. Notice by overnight mail or courier shall be deemed received on the next business day after it was sent, or such earlier time as is confirmed by the receiving Party. First class mail is deemed received 5 business days after mailing.

X. REPRESENTATIONS AND WARRANTIES

As of the date hereof, each Party represents and warrants to the other as follows: (i) it is duly organized and validly existing under the laws of the State of its incorporation/organization, (ii) is qualified to do business and is in good standing in the State where the facility receiving electric power under the Agreement is located, and has all requisite power and authority, corporate or otherwise, to enter into this Agreement and perform its obligations hereunder, (iii) the execution, delivery, and performance of this Agreement have been duly authorized in accordance with all of its organizational instruments, it has full power to execute, deliver, and perform its obligations under this Agreement, and this Agreement has been duly executed and delivered, and (iv) it has reviewed and understands this Agreement. By signing below, each

individual additionally warrants that he or she is authorized to sign this Agreement on behalf of the Party for which it was executed and is authorized to act under any effective Confirmation.

XI. MISCELLANEOUS

If the terms of any effective Confirmation modify, change or otherwise conflict with any provisions of this Agreement, the terms of the Confirmation shall govern. This Agreement may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original and all of which constitute one and the same instrument. Title to the electric power shall transfer at the Delivery Point identified on any effective Confirmation. As necessary, Buyer hereby appoints Seller its agent for the purposes of effectuating delivery. There are no third party beneficiaries to the Agreement and none are intended by the Parties. This Agreement shall not be assigned or transferred by either Party without the prior written consent of the non-assigning Party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, however, Buyer and Seller each may assign this Agreement to its parent, affiliate, subsidiary, or successor to all or a material portion of its assets, without the other Party's consent as long as notice is provided and the assigning Party retains liability for the obligations hereunder. THIS AGREEMENT AND ALL DISPUTES ARISING OUT OF THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE WHERE A FACILITY RECEIVING ELECTRIC POWER UNDER THE AGREEMENT IS LOCATED WITHOUT REGARD TO THE LAWS OF SUCH STATE REQUIRING THE APPLICATION OF THE LAWS OF ANOTHER STATE, AND FEDERAL LAW, AS APPLICABLE. Any waiver of the requirements or provisions of this Agreement must be in writing in order to be effective. The failure of either Party to insist upon strict performance of such requirements or provisions or to exercise any right hereunder shall not be construed as a waiver of such requirement or provision or a relinquishment of such right. This Agreement, including any effective Confirmation(s), Amendment(s) and/or Rider(s), if applicable, constitutes the complete agreement reached between the Parties and shall not be changed unless mutually agreed to in a writing signed by both of the Parties, except as may otherwise be provided herein. All prior agreements, understandings and representations, whether consistent or inconsistent, oral or written, between the Parties are merged into and superseded by this Agreement. The Parties acknowledge and agree that (i) this Agreement constitutes a "forward contract" within the meaning of title 11 of the United States Code (the "Bankruptcy Code"), (ii) each Party is a "forward contract merchant" within the meaning of the Bankruptcy Code and (iii) the rights set forth under Section VI herein constitute contractual rights "to liquidate, terminate, or accelerate" within the meaning of Section 556 of the Bankruptcy Code and "to terminate, liquidate, accelerate or offset" within the meaning of Section 561 of the Bankruptcy Code. Both Parties' telephones may be monitored by, and each Party hereby

CONFIRMATION

This Confirmation dated _____ is made a part of, and pursuant to terms of, the Power Sale Agreement between Buyer and Seller identified herein.

SELLER: Integrys Energy Services, Inc.**BUYER: City of Wilmington****NOTICES:**

Rosslyn Metro Center, Suite 1105
1700 N. Moore Street

Arlington, VA 22209

Attn: Account Management

Phone: 703-908-2300

Fax: 703-908-2339

E-mail: MidAtlanticAccountManagers@
integrysenergy.com

NOTICES:

Address:

Attn:

Phone:

Fax:

Email:

INVOICES:

Address:

Attn:

Phone:

Fax:

E-mail:

QUANTITY:

All usage associated with the Accounts listed below, as determined by the utility and adjusted by Seller to include distribution losses for delivery purposes.

DELIVERY POINT:

For each Account below, the Delivery Point is the load zone in which such Account is located.

BILLING:

Seller Billing

ENERGY PRICING:

Fixed Energy Pricing: For each hour in any applicable Fixed Quantity Period(s), Buyer shall pay a Fixed Energy Charge per Account, which shall equal (i) the Account's applicable Fixed Energy Rate(s) per kilowatt-hour (kWh), multiplied by (ii) the Account's applicable Fixed Quantity(ies) in kilowatts (kW). The Parties acknowledge that they may agree to Fixed Quantity Period(s), Fixed Energy Rate(s) and Fixed Quantity(ies) after the date of this Confirmation via a supplemental Confirmation signed by both Parties.

Index Energy Pricing: In the event of a positive difference between Account's hourly usage adjusted by Seller to include distribution losses and any applicable Fixed Quantity(ies) for that hour ("Positive Difference"), Buyer shall pay an Index Energy Charge equal to (i) the Day-Ahead Price per kWh, multiplied by (ii) the Positive Difference. In the event of a negative difference between Account's hourly usage adjusted by Seller to include distribution losses and the Fixed Quantity(ies) for that hour ("Negative Difference"), Buyer shall receive an Index Energy Credit equal to (i) the Day-Ahead Price per kWh, multiplied by (ii) the Negative Difference.

Definitions: For the purpose of this Confirmation, the following definitions shall apply:

a) "Day-Ahead Price" means the applicable Day-Ahead PJM hourly locational marginal price at the applicable load zone of Seller.

b) "On-Peak" means the hours from 7:00 am to 11:00 pm (the hour ending 0800 through the hour ending 2300) prevailing local time (at Account location) Monday through Friday, except for North American Electric Reliability Corporation holidays. "Off-Peak" means all hours in the billing cycle not defined as On-Peak.

ENERGY ADDER PRICING:

For each billing cycle, Buyer shall pay an Energy Adder Charge per Account, which shall equal (i) the applicable Energy Adder below per kWh, multiplied by (ii) the applicable billing cycle usage adjusted by Seller to include distribution losses.

Auction Revenue Rights credits and Marginal Loss credits have been applied to the Energy Adder.

CAPACITY PRICING:

For each billing cycle, Buyer shall pay a Capacity Charge per Account per billing cycle, which shall equal (i) a Capacity Rate per kilowatt-day (kW-day) calculated by Seller based on the PJM capacity price for the PJM delivery year containing the last day of the billing cycle and adjusted by Seller in accordance with PJM methodology, multiplied by (ii) the Account's Capacity PLC Peak Load Contribution (PLC) in kW as of the last day of the billing cycle as provided by the applicable utility, multiplied by (iii) the number of days in the billing cycle. The Capacity PLC as of the date of this Confirmation is set forth below, but the actual Capacity PLC may fluctuate as described in (ii) of this section.

TRANSMISSION SERVICE PRICING:

For each billing cycle, Buyer shall pay a Transmission Service Charge per Account per billing cycle, which shall equal (i) a Transmission Service Rate based on the PJM Network Integrated Transmission Service rate(s) per kilowatt-day (kW-day) as of the last day of the billing cycle, multiplied by (ii) the Account's Network Peak Load Contribution (PLC) in kW as of the last day of the billing cycle as provided by the applicable utility, multiplied by (iii) the number of days in the billing cycle. The Network PLC as of the date of this Confirmation is set forth below, but the actual Network PLC may fluctuate as described in (ii) of this section.

Buyer agrees that by signing below, Buyer authorizes Seller to begin enrollment and initiate service. This Confirmation to the Power Sale Agreement is effective as of the date signed by Seller.

Seller: Integrys Energy Services, Inc.

Buyer: City of Wilmington

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

MidAmerican Energy Company

RETAIL ELECTRIC SUPPLIER AGREEMENT

This Retail Electric Supplier Agreement is entered into by MidAmerican Energy Company ("MidAmerican") and City of Wilmington, Delaware ("Customer") and shall be effective as of the later date set forth under the parties' signatures below ("Effective Date"). This Retail Electric Supplier Agreement, together with any written supplements thereto and all Schedules shall form a single integrated agreement (the "Agreement") between MidAmerican and Customer. Customer acknowledges and agrees that it understands and accepts the terms, conditions and risks of this Agreement and it is entering into this Agreement for its own account based upon its own judgment and not in reliance upon any information, advice or counsel which may or may not have been provided by MidAmerican.

CONDITIONS OF AGREEMENT. This Agreement constitutes the entire understanding between MidAmerican and Customer regarding the subject matter hereof. No modification to this Agreement will be effective unless evidenced in writing signed by both parties. This Agreement supersedes all prior agreements between the parties regarding the subject matter of this Agreement. This Agreement is intended to govern transactions for the purchase and sale of electricity and related services to be entered into between the parties from time to time as evidenced by separate Schedules A, B and C, as applicable ("Schedules"), setting forth certain commercial and other terms for the purchase and sale of electricity. Following execution and delivery by both parties and successful enrollment of specified properties by the electric distribution company or local delivery company ("delivery company"), such Schedules shall become effective and incorporated into this Agreement. The parties agree that the laws of the state in which Customer is incorporated govern this Agreement unless otherwise indicated on Schedule A. The parties agree that this Agreement is a forward contract under all applicable federal and state bankruptcy laws and that they are forward contract merchants with respect thereto.

CUSTOMER RESPONSIBILITIES. Customer agrees to purchase and receive from MidAmerican 100% of its electric energy supply and related services for all the properties listed on the Schedules. Customer acknowledges that MidAmerican may recover all Losses and Costs as described in the section entitled Events of Default; Remedies, associated with the removal of any property or account listed on such Schedules. Customer authorizes MidAmerican to perform duties on its behalf, including, but not limited to, submitting customer enrollments to the electric distribution company or local delivery company and/or moving any of Customer's properties on or off delivery company's applicable tariffs, to permit Customer to receive the electric energy at its properties.

MIDAMERICAN RESPONSIBILITIES. Subject to the terms of this Agreement, MidAmerican agrees to sell and provide to Customer 100% of Customer's electric energy supply and related services for all the properties listed on the Schedules. MidAmerican will schedule and deliver electric energy, including amounts for associated transmission and distribution losses as defined by the delivery and/or transmission tariffs ("Line Losses"), to the delivery company interconnecting point and the delivery company is responsible for delivery of electric energy to Customer's properties.

TERM. The term of this Agreement shall commence on the Effective Date and shall remain in effect until terminated by either party upon thirty (30) days' prior written notice; provided, however, that such termination shall not affect or excuse the performance of either party under any provision of this Agreement that by its terms survives any such termination and, provided further, that this Agreement shall remain in effect with respect to transactions entered into prior to the effective date of such termination until both parties have fulfilled all of their obligations with respect to such transactions.

ENERGY DELIVERY. Title to electric energy will pass from MidAmerican to Customer at the Customer's meter(s) (the "Delivery Point(s)"). Each party will comply with all applicable federal and state laws and all applicable industry rules, and delivery and/or transmission tariffs, as amended from time to time.

BILLING AND PAYMENT. MidAmerican will bill Customer monthly for all electric energy and related services as listed on the Schedules, plus any applicable taxes, delivery charges, or surcharges. Customer will pay each bill in full by the due date on the bill. Late payment charges may be assessed at a rate equal to the lesser of 1½% per month or the maximum rate allowable by law. Termination of this Agreement will not relieve Customer of its liability for payment of any outstanding amounts due MidAmerican.

EVENTS OF DEFAULT; REMEDIES. If the defaulting party (i) fails to pay any amount, when due, with respect to this Agreement; (ii) is subject to a bankruptcy event; (iii) makes any representation or warranty that is false or misleading in any material respect; (iv) fails to provide a cash deposit, letter of credit or other financial security to the other party within two (2) business days of the other party's demand, when such demand is based on the other party's reasonable good faith belief that the ability of the defaulting party to perform its obligations under this Agreement is materially impaired; or (v) fails to perform any other material obligation imposed upon it by this Agreement; then the non-defaulting party has the right, without notice, to suspend performance and may terminate this Agreement at any time during the continuance of such event of default, upon which it will calculate in a commercially reasonable manner a settlement amount equal to its total Losses and Costs, if any, resulting from termination of this Agreement. Costs shall mean brokerage fees, reservation fees, reasonable attorneys'

CONFIDENTIAL

fees, commissions and other similar third-party transaction expenses incurred by a party in terminating, liquidating or entering into new arrangements which replace any obligations assumed by such party due to the termination of this Agreement. Losses shall mean an amount equal to the present value of the economic loss to such party, exclusive of Costs, resulting from termination of this Agreement. The settlement amount will be due within five (5) business days after the non-defaulting party has notified the defaulting party of the settlement amount. The non-defaulting party is obligated to respond and act in a commercially reasonable manner and mitigate its damages, liabilities, Losses and Costs.

FAILURE OF DELIVERY. MidAmerican will not be liable for any injury, loss, claim, expense, liability or damage resulting from failure by the delivery company or transmission provider to provide delivery services or properly perform and/or timely process any Customer enrollments or transmission requests.

NO CONSEQUENTIAL DAMAGES. In no event will either party be liable to the other party or to any third-party, for any special, incidental, indirect, consequential, punitive or exemplary damages or for any damages of a similar nature arising out of or in connection with this Agreement.

INDEMNIFICATION AND FORCE MAJEURE.

Each party agrees to indemnify, defend and hold the other party harmless from and against all third-party claims for damages, liability and expenses relating to or arising out of damage to property or injury to persons (including death) resulting from the negligent acts, errors or omissions of a party or its agents. If the parties are held jointly and severally liable for any claim, damage, liability or expense of any third-party, a right of contribution will exist between the parties.

If either party is unable, wholly or in part, by Force Majeure (as defined below) to carry out its obligations under this Agreement, and upon such party's giving written notice and full particulars of such Force Majeure to the other party as soon as practicable after the occurrence of the cause, the obligations of the party giving notice, so far as its obligations are affected by the Force Majeure, will be suspended during the continuance of the Force Majeure. Each party shall seek to remedy the Force Majeure with all reasonable dispatch. If a Force Majeure lasts for fifteen (15) continuous days, the party not subject to the Force Majeure has the option of terminating any affected Schedules at any time during the continuance of such Force Majeure. In the event of termination each party shall be entitled to calculate a settlement amount equal to its total Losses and Costs, if any, resulting from termination of the affected Schedules and such amount shall be due from the other party within five (5) business days after the other party has been notified of the settlement amount.

Force Majeure means any cause(s) not reasonably within the control, and without fault or negligence, of the party affected thereby and which by the exercise of reasonable due diligence by the affected party could not have been prevented,

including without limitation, acts of God, civil disturbances, labor strike, interruptions caused by governmental or court orders, inability of the delivery company to provide Delivery Services, inability of the transmission operator to provide transmission services or the curtailment of transmission service or the breakage, accident or failure of transmission and/or distribution facilities. Neither economic hardship nor economic conditions will constitute a Force Majeure under this Agreement. In the event of a Force Majeure, Customer shall continue to be obligated to make payments for all electric energy supply and related services delivered to and consumed at its properties.

WARRANTIES. MIDAMERICAN WARRANTS ONLY THAT IT HAS THE RIGHT TO SELL ENERGY SERVICES AND THAT SUCH ENERGY SERVICES ARE FREE FROM ALL LIENS OF ANY KIND. MIDAMERICAN DISCLAIMS ANY OTHER WARRANTY OF ANY KIND, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

FINANCIAL RESPONSIBILITY. Each party agrees to provide financial information reasonably requested by the other party to facilitate credit review. Each party certifies that all information provided to the other party is truthful and accurate and all information obtained from the other party will be kept confidential.

ASSIGNMENT. Neither party may assign this Agreement without the prior written authorization of the other party, which consent will not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, either party may assign this Agreement to the resulting entity of a corporate restructuring or other successor in interest and shall provide immediate notice of such assignment.

CONFIDENTIALITY. This Agreement and its terms are confidential and shall not be disclosed to any third party except as required by law.

SEVERABILITY. If any provision(s) of this Agreement is held to be invalid, illegal or unenforceable the remaining provisions will remain in full force and effect.

NON-WAIVER. Either party's failure at any time to require strict performance by the other party of any provision of this Agreement will not waive a party's right to demand strict compliance at any other time.

RECORDED CONVERSATIONS. Phone conversations between employees and/or authorized agents of the parties may be recorded on tape or other electronic media to verify customer service quality and pricing terms. Unless a party expressly objects to these recordings at the time of the recording, these recordings may be used as evidence in any proceeding or action relating to this Agreement.

SCHEDULE A
TO THE RETAIL ELECTRIC SUPPLIER AGREEMENT
BETWEEN MIDAMERICAN AND CITY OF WILMINGTON, DELAWARE

DATE: April 15, 2010

These Schedules are being entered into pursuant to and in accordance with the Retail Electric Supplier Agreement between Customer and MidAmerican (the "Retail Electric Supplier Agreement"). The pricing contained on Schedule B is indicative until signed by both parties and shall be valid after 5 p.m. Central Time on April 15, 2010 only at MidAmerican's sole discretion.

These Schedules identify the list of State and/or delivery company specific terms, Customer's properties, contact information, Energy Services Prices, Term and Quantities of Electric Energy, if applicable, covered by these Schedules. Notwithstanding anything to the contrary, any conflict between these Schedules and the Retail Electric Supplier Agreement will be resolved in favor of these Schedules. Capitalized terms used herein but not defined will have the meanings ascribed to them in the Retail Electric Supplier Agreement.

This Schedule A replaces in its entirety any prior Schedule A currently in effect between Customer and MidAmerican, relating to Customer's properties identified below, effective with Customer's May 2010 meter read, UNLESS the term of a previously executed Schedule A extends beyond the term of this Schedule A. Both parties shall fulfill their obligations through the Term of any executed Schedule A.

Customer maintains the right to terminate any Delaware Schedules, without penalty, upon thirty (30) days written notice to MidAmerican if relocating to an area outside of delivery company service territory. Any other terminations will be deemed a default as defined in the Events of Default; Remedies section of the Agreement. In the case of such default, the non-defaulting party has the right, with thirty (30) days notice, to suspend performance and may terminate the Agreement and/or any existing Schedules at any time during the continuance of such event of default.

CONTACT INFORMATION. Customer inquiries shall be directed to MidAmerican's Unregulated Retail Services Customer Service department at 1-800-432-8574 M-F 7AM-5PM CST. Customers may also submit inquiries via email at customerservice-retail@midamerican.com or by visiting MidAmerican's website at midamericanchoice.com. Customer maintains the right to contact the Delaware Public Service Commission at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, DE 19904 or by calling 1-800-282-8574 (TDD 302-736-7500) in the event of unsatisfactory complaint resolution by either MidAmerican or the delivery company. To report service outages or other emergency situations, Customers in New Castle County should contact Delmarva Power at 1- 800-898-8042. Customers in Kent and Sussex Counties should contact Delmarva Power at 1-800-898-8045.

LIST OF CUSTOMER'S PROPERTIES

Customer Name Appearing on Bill	Account Number	Service Address	Delivery Company
CITY OF WILM WATER DIVISION	251506799997	306 SPRINGHILL AVE WILMINGTON, DE 19809-3144	Delmarva Power
CITY OF WILM WATER DIVISION	252546699999	1611 FOULK RD WILMINGTON, DE 19803-0000	Delmarva Power
CITY OF WILM PARKS & REC	253542999995	601 W 34TH ST WILMINGTON, DE 19802-0000	Delmarva Power
CITY OF WILM WATER DIVISION	253564599996	E MATSON RUN PKWY WILMINGTON, DE 19802-0000	Delmarva Power
CITY OF WILM PARKS & REC	254212999992	N LOCUST ST WILMINGTON, DE 19802-0000	Delmarva Power
VFL TECHNOLOGY CORP	254213299996	151 HAY RD WILMINGTON, DE 19809-0000	Delmarva Power
WILMINGTON FIRE BUREAU	254398499999	333 E 30TH ST WILMINGTON, DE 19802-3201	Delmarva Power
WILMINGTON FIRE DEPT	254425499996	2200 TATNALL ST WILMINGTON, DE 19802-4142	Delmarva Power

SCHEDULE A
TO THE RETAIL ELECTRIC SUPPLIER AGREEMENT
BETWEEN MIDAMERICAN AND CITY OF WILMINGTON, DELAWARE

DATE: April 15, 2010

LIST OF CUSTOMER'S PROPERTIES

Customer Name Appearing on Bill	Account Number	Service Address	Delivery Company
WILMINGTON FIRE DEPT	268186599992	400 NEW CASTLE AVE WILMINGTON, DE 19801-5818	Delmarva Power
CITY OF WILM WATER DIVISION	268217199986	4131 NEW CASTLE AVE WILMINGTON, DE 19801-0000	Delmarva Power
CITY OF WILM WATER DIVISION	268675999992	101 E 16TH ST WILMINGTON, DE 19801-0000	Delmarva Power
CITY OF WILM PARKS & REC	268678299994	N KING ST WILMINGTON, DE 19801-0000	Delmarva Power
CITY OF WILM PARKS & REC	268688499998	NEW CASTLE AVE WILMINGTON, DE 19801-0000	Delmarva Power
CITY OF WILM PARKS & REC	268696799991	900 NEW CASTLE AVE NEW CASTLE, DE 19720-3638	Delmarva Power
CITY OF WILM WATER DIVISION	268700099990	201 E 16TH ST WILMINGTON, DE 19801-0000	Delmarva Power
CITY OF WILM WATER DIVISION	268716799997	101 E 16TH ST WILMINGTON, DE 19801-0000	Delmarva Power
CITY OF WILM PUBLIC WORKS	276120299975	800 FRENCH ST WILMINGTON, DE 19801-3590	Delmarva Power
CITY OF WILM PUBLIC WORKS	276120499963	800 FRENCH ST WILMINGTON, DE 19801-3590	Delmarva Power
CITY OF WILM PUBLIC WORKS	276120499971	800 FRENCH ST WILMINGTON, DE 19801-3590	Delmarva Power
CITY OF WILM PUBLIC WORKS	276120599978	800 FRENCH ST WILMINGTON, DE 19801-3590	Delmarva Power
CITY OF WILM PUBLIC WORKS	276122199975	800 FRENCH ST WILMINGTON, DE 19801-3590	Delmarva Power
CITY OF WILM PUBLIC WORKS	276122399971	800 FRENCH ST WILMINGTON, DE 19801-3590	Delmarva Power
CITY OF WILMINGTON	330145799996	900 N MARKET ST WILMINGTON, DE 19801-3012	Delmarva Power
CITY OF WILM PARKS & REC	342909099992	804 N MARKET ST WILMINGTON, DE 19801-3011	Delmarva Power
CITY OF WILMINGTON	354354699960	200 N MARKET ST WILMINGTON, DE 19801-2528	Delmarva Power
CITY OF WILMINGTON	354354699978	400 N MARKET ST WILMINGTON, DE 19801-3003	Delmarva Power
CITY OF WILMINGTON	354354699986	WALNUT ST WILMINGTON, DE 19801-0000	Delmarva Power

**DRAFT****CONFIDENTIAL**

SCHEDULE B
TO THE RETAIL ELECTRIC SUPPLIER AGREEMENT
BETWEEN MIDAMERICAN AND CITY OF WILMINGTON, DELAWARE
ENERGY SERVICES - FIXED/VARIABLE SUPPLY PRICE

DATE: April 15, 2010

Customer will be billed an amount corresponding to the time period set forth below ("Pricing Period") applied to all the Customer's electric energy usage at its properties as listed on Schedule A. During seasonal changes between Pricing Periods, Customer's usage will be prorated based on actual interval data (if available) or average daily usage (including on-peak and off-peak periods). The Fixed Price for the corresponding Pricing Period will then be applied. The transition between the Fixed Price and the Variable Price will become effective with the meter read date applicable to the bill month.

ON-PEAK/OFF-PEAK FIXED PRICE. If Customer elects an On-Peak and Off-Peak Fixed Price, the on-peak and off-peak kWh will be determined using the North American Electric Reliability Council (NERC) definition of on-peak and off-peak hours. On-peak and off-peak energy usage for Customer's non-interval meters, if any, will be determined by scaling monthly usage to the applicable class profile. MidAmerican may estimate on-peak and off-peak usage in the event of metering equipment malfunctions.

SEASONAL FIXED PRICE. If Customer does not elect an On-Peak/Off-Peak Fixed Price, the Seasonal Fixed Price will be applied to all usage within the respective Pricing Period.

VARIABLE PRICE. The Variable Price per kWh for Hourly Energy Usage shall be the associated hourly DPL Zone Day Ahead Locational Marginal Price (LMP) (in \$/kWh).

Pricing Period	On-Peak/Off-Peak Fixed Price (\$/kWh)		Seasonal Fixed Price (\$/kWh)
	On-Peak	Off-Peak	
May 2010 - Sep 2010	Variable Price + \$0.00100	Variable Price + \$0.00100	N/A
Oct 2010 - May 2011	Variable Price + \$0.00100	Variable Price + \$0.00100	N/A

In addition to the Fixed and/or Variable Price in this Schedule B, MidAmerican will include and Customer will pay the following as additional line items on the monthly invoice:

- **Transmission** charges will represent costs associated with providing transmission service and will be based on approved tariffs.
- **Ancillary** charges will be based on the approved tariff and operating agreement as administered by the regional transmission organization.
- **Capacity** charges will be based on the PJM Locational Reliability Charge and MidAmerican's incurred costs.
- **Line Loss** charges will be based on the combined transmission and delivery tariffed loss factors applied to the Fixed Price and/or Variable Price for each account separately.

Any future changes in business practice, capacity, market based ancillaries or applicable delivery or transmission tariffs that affect the items included in the applicable Retail Services Charge, transmission, Line Loss charges, or Variable Price as defined in this Schedule B, excluding Fixed Price, may be incorporated herein as of the effective date on which the change occurs or thereafter.

HOURLY ENERGY USAGE shall be defined as all electric energy in kWh consumed each hour at the Customer's properties. For billing purposes, Hourly Energy Usage for Customer's non-interval meters, if any, will be determined by scaling monthly usage to the applicable class profile. Hourly Energy Usage for non-interval meters, if any, will be added to hourly usage recorded by Customer's interval meters to determine total Hourly Energy Usage at the Customer's properties. MidAmerican may estimate Hourly Energy Usage in the event of metering equipment malfunctions.

CONVERSION TO FIXED PRICING. Customer has the option to convert the Variable Price above to a Fixed Price at all the properties listed on Schedule A. To exercise this option, both parties must execute a revised Schedule B at least 10 days prior to Customer's earliest normal delivery company meter reading date for all properties. If the conversion to a Fixed Price is less than

SCHEDULE C
TO THE RETAIL ELECTRIC SUPPLIER AGREEMENT
BETWEEN MIDAMERICAN AND CITY OF WILMINGTON, DELAWARE
QUANTITIES OF ELECTRIC ENERGY (kWh)

DATE: April 15, 2010

This Schedule C shall be applicable when Customer is receiving a Fixed Price for 100% of its firm electric energy for all the electric energy at all the properties listed on Schedule A.

Notice of Load Changes

Customer agrees to provide prior written notice to MidAmerican of any material changes in facilities, operating schedules, equipment, and/or such other factors which may affect Customer's usage of electric energy and Customer's normal electric Load profile.

Customer notifications required by this Notice of Load Changes provision will be communicated via e-mail to

ElectricForecasting@midamerican.com detailing the expected change in operations including the date, hours affected and the effect on the electric energy consumption. If notification occurs less than one (1) business day prior to the change in operations, Customer will also phone MidAmerican's on-call scheduler at telephone number 800-798-1722 and report the changes in Customer's electric energy usage including the date and hours affected and the effect on Customer's electric energy consumption. MidAmerican assumes liability for any related charges imposed by the delivery company or transmission provider provided Customer notifies MidAmerican according to this Notice of Load Changes provision or if the related charges are incurred as a result of MidAmerican's failure to perform in a commercially reasonable manner.

If Customer does not provide notice to MidAmerican according to the Notice of Load Changes provision, Customer may be obligated to reimburse MidAmerican for any/all costs MidAmerican incurs as a result of Customer's load change(s). Such costs may include imbalance fees, and/or other related charges incurred due to the increase(s) and/or decrease(s) in Customer's electric energy usage. Such costs may accrue beginning with the onset of the energy usage change up to and including two (2) hours after Customer has notified MidAmerican.

Nominated Quantity of Electric Energy

Subject to the terms of the Agreement, MidAmerican is obligated to sell to Customer, and Customer is required to purchase from MidAmerican no less than the minimum and no more than the maximum amount of firm electric energy designated as follows:

Summer minimum kilowatt-hour (kWh) quantity	17,421,000 kWh
Winter minimum kilowatt-hour (kWh) quantity	37,158,000 kWh
Summer maximum kilowatt-hour (kWh) quantity	23,569,000 kWh
Winter maximum kilowatt-hour (kWh) quantity	50,272,000 kWh

The foregoing kWh maximums and minimums apply to Customer's metered usage from all meters (interval and non-interval) located at Customer's properties. All electric energy sold will be for Customer's exclusive use and consumption at Customer's properties listed on Schedule A. For purposes of this Schedule C, a Summer Period is defined as the four monthly billing periods June through September ("Summer Period"), and a Winter Period is defined as the eight monthly billing periods October through May ("Winter Period"). The minimum and maximum energy amounts are based on Customer's normal operating electric profile. If MidAmerican provides electric energy to Customer's properties for a period of time that is less than annual, the minimum and maximum energy (kWh) amounts will be prorated for the applicable time period. Except for an event of Force Majeure, MidAmerican, as the non-defaulting party may calculate and Customer may be required to pay an amount equal to the Settlement Amount as stated in Events of Default; Remedies hereof if the Customer fails to take the minimum amounts of electric energy set forth above for the applicable Summer and/or Winter Period.

If Customer requests MidAmerican provide more electric energy than the Schedule C limits, MidAmerican will make a commercially reasonable attempt to acquire the additional electric energy in accordance with the prices as listed on Schedule B. In the event MidAmerican is unable to acquire the additional electric energy at the applicable energy price listed on Schedule B, Customer will be liable for MidAmerican's Cost of Cover. Cost of Cover means all costs and expenses necessary to fully indemnify and hold MidAmerican harmless for the electric energy provided to Customer in excess of the Maximum Kilowatt-Hour (kWh) Quantity limits as listed above. Costs and expenses include, but are not limited to, the cost of procuring additional electric energy at prevailing market prices, additional transmission service charges and any imbalance, charges or penalties associated with scheduling such service on behalf of Customer. MidAmerican will compute its Cost of Cover and include such amounts on Customer's bill. This provision does not obligate MidAmerican to provide more electric energy to Customer's properties than the Schedule C limits without MidAmerican's express agreement.

Suez Energy Resources NA, Inc.

MASTER ELECTRIC ENERGY SALES AGREEMENT**DRAFT**

This Master Electric Energy Sales Agreement (this "Agreement") is entered into effective as of the ____ day of _____, 20____ (the "Effective Date") by and between SUEZ ENERGY RESOURCES NA, INC. ("Suez"), a Delaware corporation and _____ ("Customer"). Suez and Customer are also referred to herein individually as a "Party" and collectively as the "Parties." Unless provided to the contrary, capitalized terms are defined in Section 3.

SECTION 1. TRANSACTION TERMS AND CONDITIONS

- 1.1 Purchase and Sale.** Subject to the terms and conditions set forth herein, Suez shall sell and deliver and Customer shall purchase and receive Firm Full Requirements Service pursuant to a Sales Confirmation attached hereto and the terms and conditions specified herein. Any conflict between the terms and conditions of this Agreement and the terms and conditions in an applicable Sales Confirmation shall be resolved in favor of the Sales Confirmation. During the term of this Agreement, should Suez fail to deliver sufficient quantities of electricity to the local utility distribution company for delivery to Customer or fail to schedule the delivery of electricity to Customer by the local utility distribution company, Customer and Suez recognize: (i) the local utility distribution company, per the local utility distribution company's Tariff responsibilities, nevertheless is obligated to deliver sufficient electricity to satisfy Customer's needs and (ii) Suez shall settle with the ISO subject to Section 1.4 herein at no additional cost or expense to Customer with respect to the purchase of electricity to cover any such failure.
- 1.2 Contract Price.** Customer shall pay Suez the Contract Price, as specified in an applicable Sales Confirmation, for the quantity of electric energy consumed in a Billing Cycle.
- 1.3 Term.** This Agreement shall be effective on the Effective Date and shall remain in effect until terminated by either Party upon thirty (30) days prior written notice. Notwithstanding the foregoing, the termination of this Agreement shall not affect or excuse the performance of either Party pursuant to any provision of this Agreement that by its terms survives any such termination and provided, further, any Sales Confirmations executed pursuant to this Agreement shall remain in effect, and the provisions of this Agreement shall continue to apply thereto, until both Parties have fulfilled any and all of their respective obligations with respect to the underlying transactions. Suez shall use commercially reasonable efforts to enroll Customer's meters in a timely manner pursuant to the Sales Confirmation and shall indemnify Customer for any additional energy costs incurred at such meters as a result of such delay provided, however, Suez shall assume no liability for any late enrolled meters resulting from any act or omission by Customer, the ISO, local distribution provider or any third Party beyond the reasonable control of Suez.
- 1.4 Billing and Payment.** As soon as practicable following the receipt of any invoice detailing Utility Related Charges, ISO fees or charges, and Customer's metered electric energy consumption, Suez will deliver to Customer an invoice setting forth the amount due for the preceding Billing Cycle. Such invoice shall include the monthly charges for energy consumption and any other charges or fees imposed pursuant to the terms of this Agreement, and any applicable Taxes and Utility Related Charges. Suez may, however, use estimated data for billing purposes hereunder provided that such estimates will be subject to future reconciliation upon receipt of final data regarding the actual quantity of energy consumed for the applicable Billing Cycle. As measured from the date of the invoice, payment shall be due to Suez by check, electronic transfer or any other mutually agreed upon payment method in accordance with the payment terms of the Sales Confirmation. Overdue payments will accrue interest at the Interest Rate from the due date to the date of payment. If any amount of an invoice is disputed in good faith, the entire amount shall be paid when due. Any disputed amounts that are ultimately determined to be owed to Customer shall be repaid by Suez with interest accrued at the Interest Rate from the date payment was due through the date of repayment to the Customer. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other arising from this Agreement through netting, in which case all amounts owed by each Party to the other Party shall be netted so that only the excess amount remaining due shall be paid by the owing Party. Notwithstanding the foregoing, if Suez elects to utilize the applicable local utility distribution company to distribute invoices detailing the services and appropriate charges specified herein, Customer shall comply with any and all billing and payment requirements as established by the local utility distribution company as approved by the applicable regulatory authority.
- 1.5 Alternate Proposal.** At any time during the term herein, Customer may request, and Suez shall provide, an alternative pricing and/or product proposal in lieu of the transaction contemplated by any Sales Confirmation then in effect under this Agreement. Such a proposal shall include any and all terms and conditions necessary to implement the proposal. Notwithstanding the foregoing, any proposals provided pursuant to this section shall not be binding on either of the Parties unless mutually agreed to in writing by each Party.

upon written notification to the Defaulting Party. Upon the occurrence of any Event of Default described in Section 2.6(f) as it may apply to any Party, this Agreement will automatically terminate, without notice, and without any other action by either Party as if an Early Termination Date had occurred on the day prior to the occurrence of the Event of Default described in Section 2.6(f). In the event the Non-Defaulting Party elects to terminate this Agreement, it shall calculate, in a commercially reasonable manner, a Settlement Amount for this Agreement effective as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such related transactions, if applicable, are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable). The Non-Defaulting Party shall aggregate all Settlement Amounts resulting from the termination of this Agreement into a single net amount (the "Termination Payment") payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within two (2) Business Days after receipt of such notice. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment. (b) Without limiting its rights under this Agreement, after an Event of Default, the Non-Defaulting Party may set off any or all amounts the Defaulting Party owes to it against any or all amounts it owes the Defaulting Party (whether under this Agreement or otherwise and whether or not then due), provided that any amount not then due that is included in such setoff shall be discounted to present value to take in account the period between the date of setoff and the date on which such amount would have otherwise been due. This Section 2.7(b) shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

2.8 Limitation of Liability. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER DAMAGES OR REMEDIES HEREBY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY AND ALL OTHER DAMAGES AND REMEDIES ARE WAIVED. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY OR INDIRECT DAMAGES IN TORT, CONTRACT UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

2.9 Indemnification. Except as limited by Section 2.8, each Party shall indemnify, defend and hold the other Party harmless from claims, demands and causes of action asserted against the indemnitee by any person arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to electric energy is vested in such Party as provided in Section 2.3.

2.10 Representations and Warranties. As a material inducement to entering into this Agreement, each Party, with respect to itself, represents and warrants to the other Party as of the Effective Date as follows: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary to perform this Agreement; (b) it has all regulatory authorizations, permits and licenses necessary for it to legally perform its obligations under this Agreement; (c) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents or any contract to which it is a party or any law, rule, regulation, order, writ, judgment, decree or other legal or regulatory determination applicable to it; (d) this Agreement and each other document executed and delivered in accordance with this Agreement constitute its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any equitable defenses; (e) it is not Bankrupt or Insolvent and there are no reorganization, receivership or other arrangement proceedings pending or being contemplated by it, or to its knowledge threatened against it; and (f) it has read this Agreement and fully understands its rights and obligations under this Agreement, and has had an opportunity to consult with an attorney of its own choosing to explain the terms of this Agreement and the consequences of signing it. Customer further represents and warrants to Suez throughout the term of this Agreement that no facility or account listed on Attachment A, Exhibit 1 is classified by the applicable utility as a residential account. With the exception of any warranty that is expressly set forth in this Agreement, Suez and its successors, assigns and delegates make NO WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE with regard to the services Suez provides or the activities Customer undertakes, pursuant to this Agreement. Suez acts solely as counter-party in all transactions with Customer under this or any other Agreement. Accordingly, Suez has no duty to advise Customer or exercise judgment on Customer's behalf as to the merits or suitability of any transactions that Suez proposes to enter into with Customer.

2.11 Confidentiality. Neither Party shall disclose, unless authorized in writing by the other Party, the terms of this Agreement to a third party (other than the Party's employees or its lenders, counselors or accountants who have agreed to keep such terms confidential) except in order to comply with any applicable law, order, regulation or exchange rule, to collect debts owed or to obtain transmission, distribution, ancillary or other regulated services; provided, each Party will notify the other Party of any proceeding of which it is aware which may result in non-routine disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation; provided, all monetary damages shall be limited to direct actual damages and a breach of this section shall not give rise to a right to suspend or terminate this Agreement. Notwithstanding the foregoing, Customer agrees to permit Suez to utilize Customer's name as a customer solely for marketing and publicity purposes.

SECTION 3. DEFINITIONS

"Bankrupt" means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under a bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

"Billing Cycle" means, for each account, the period between successive invoices rendered by either Suez or the applicable utility during the applicable Term.

"Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party to whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

"Claiming Party" means the Party claiming an event of Force Majeure.

"Contract Price" means the price in U.S. dollars as specified in an applicable Sales Confirmation.

"Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party entering into new arrangements that replace a terminated Transaction; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a transaction.

"Firm Full Requirements Service" means that either Party shall be relieved of its obligations to sell and deliver or purchase and receive electric energy hereunder without liability only to the extent that, and for the period during which, such performance is prevented by Force Majeure or any type of curtailment as ordered by the applicable ISO.

"Gains" means with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs) resulting from the termination of a transaction, determined in a commercially reasonable manner.

"Governmental Authority" means any federal, state, local, municipal or other government, any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise jurisdiction over the Parties or any transaction contemplated herein.

"Guarantor" means with respect to a Party, an entity providing a guaranty of payment in favor of the other Party in a form mutually agreed to by the Parties.

"Insolvent" means with respect to any Party, when such Party shall be unable to pay liabilities as they mature or such entity shall admit in writing its inability to pay its debts generally as they become due.

"Interest Rate" means, for any date, the lesser of (a) one and one-half percent (1 ½ %) per month or (b) the maximum rate permitted by applicable law.

"ISO" means an Independent System Operator to be specified on a Sales Confirmation.

"Losses" means with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of a transaction in a commercially reasonable manner.

"Material Adverse Change" shall mean that Customer's credit rating has dropped below BBB- per Standard & Poors or Baa3 per Moody's Investors Service.

"Performance Assurance" means collateral in the form of either cash, letter(s) of credit, corporate guarantees, or other security acceptable to the requesting Party.

"Settlement Amount" means, with respect to a transaction and the Non-Defaulting Party, the Losses and Costs (or Gains), expressed in U.S. Dollars, that such Party incurs as a result of the liquidation, including, but not limited to, Losses and Costs (or Gains) based upon the then current replacement value of the transaction together with, at the Non-Defaulting Party's option, but without duplication, all Losses and Costs that such Party incurs as a result of maintaining, terminating, obtaining or re-establishing any hedge or related trading positions pursuant to this Agreement.

"Utility Related Charges" is defined in the applicable Sales Confirmation.

"Utility Transfer Date" means the time and date on which the applicable utility has completed the process necessary to permit Suez to commence or discontinue providing the services hereunder. The process may include, as necessary and without limitation, recognizing Suez as Customer's electric supplier and /or limited agent; processing and acting on direct access service requests; installation of meters and the final meter read date.

**DRAFT**Customer Id:
PR #:
Agreement #: 1-20DKQW**SALES CONFIRMATION
Delaware**

This Sales Confirmation is entered into this ____ day of _____, 20____ ("Confirmation Effective Date"), by and between GDF SUEZ Energy Resources NA, Inc. ("Suez") and ("Customer") (hereinafter collectively referred to as the "Parties") regarding the purchase and sale of electric energy and related services pursuant to and subject to the Master Electric Energy Sales Agreement dated _____, 20____ by and between the Parties (the "Master Agreement"). Terms not defined herein shall have the meaning given in the Master Agreement.

Transaction Term: This Sales Confirmation shall be effective on the Confirmation Effective Date and the service contemplated herein shall commence on the Utility Transfer Date immediately following the Start Date as specified for each facility in Attachment A, Exhibit 1. This Sales Confirmation shall remain in effect through the Utility Transfer Date immediately following the End Date as specified for each facility in Attachment A, Exhibit 1, but in no event later than the end of the Billing Cycle including such date, unless earlier terminated pursuant to the Master Agreement or this Sales Confirmation, provided such termination shall not affect or excuse performance under any provision surviving such termination. Notwithstanding the foregoing, Customer's options for service beyond the Utility Transfer Date immediately following the End Date include i) executing an agreement with Suez for new terms and conditions of service, ii) transferring the accounts to another competitive supplier or iii) providing a written request to Suez to transfer Customer's accounts to the applicable default service provider. In the event Customer does not timely exercise one of the options above, service may continue hereunder following the End Date until the next available Utility Transfer Date following Customer's exercise of one of the above options or Suez's transfer of the accounts to the applicable default service provider, whichever occurs first (the "Post-Term Period"). For service during the Post-Term Period, in lieu of the pricing as described in this Sales Confirmation, Customer shall pay Suez an amount equal to the applicable real time index price as posted by the ISO for the relevant delivery point (the "Real Time Market Price") plus a per kWh Post-Term Charge as defined herein.

Contract Price: Customer shall pay Suez the applicable Contract Price per kWh as specified in Attachment A and the pricing components listed below:

Monthly Index Charge: Customer shall pay Suez the Monthly Index Charge per kWhs of electric energy consumed in a Billing Cycle. The Monthly Index Charge shall be the weighted average (weighted in accordance with an applicable Account hourly consumption or utility rate class usage profile) of the hourly Day Ahead or Real Time (as specified for "Index" in Attachment A, Exhibit 1) Locational Marginal Price, or any successor price thereto, as posted by the ISO for the relevant delivery point identified in Attachment A, Exhibit 1 herein.

Retail Adder Price: In addition, for each Billing Cycle, Customer shall pay Suez the Retail Adder Price as specified in Attachment A, Exhibit 1 per kWh of electric energy consumed. Except to the extent that a charge is separately listed as an obligation in this Sales Confirmation (e.g. Losses, Ancillary Services), the Retail Adder Price may include, if applicable, an Intermediary Fee, and is inclusive of all non-utility charges including ancillary services, installed (or unforced) capacity, losses (including distribution and transmission losses (if applicable) incurred in connection with the delivery of energy to Facilities/Accounts identified in Attachment A), network integrated transmission (adjusted for tariff changes), and other ISO charges or administrative fees incurred in connection with delivery of energy to the delivery point specified in Attachment A, Exhibit 1. Unless a Capacity Charge is separately listed as an obligation in this Sales Confirmation, if Customer's energy consumption during any Billing Cycle is less than the Monthly Anticipated Consumption specified in Attachment A by fifteen percent (15%) or more ("Deficient Usage"), Suez may adjust the Retail Adder Price in order to recover any costs related to under recovery of capacity costs resulting from that Deficient Usage.

Taxes and Utility Related Charges are separately listed in the Customer bill and are not included in any other charge identified in this Sales Confirmation.

Loss Multiplier: Customer shall be subject to a charge for the pass through of ISO and utility distribution company tariff-imposed loss charges incurred in connection with delivery of energy to the delivery point specified in Attachment A and losses incurred in connection with the distribution and transmission of energy to Facilities/Accounts identified in Attachment A, Exhibit 1. Customer's consumption shall be subject to a loss



"Small Commercial Customer" as defined the Delaware Public Service Commission means a retail electric customer taking service under Delmarva Power & Light's tariff, currently on file with the Commission, Service Classification "Small General Service-Non Demand Rate" or the Delaware Electric Cooperative, Inc.'s tariff, currently on file with the Commission, Service Classification "General Service." Any Small Commercial Customer who has joined with an affiliated non-Small Commercial Customer or a non-Residential Customer for the purpose of contracting for electric supply service shall be exempt from the definition of a Small Commercial Customer.

"Electric Distribution Company" means the public utility owning and/or operating the transmission and/or distribution facilities in the State of Delaware.

Payment Terms: Twenty (20) days.

IDR Meter Authorization: Customer shall, during the term of this Sales Confirmation, promptly provide all necessary authorizations to Suez in order to allow Suez to receive interval meter data (IDR) from Customer's facility(ies) listed on Attachment A. At its sole cost, Suez or its representative shall have the right to access or install telemetry from Customer's facility(ies) listed on Attachment A in order to track and evaluate Customer's usage on a regular basis for the purpose of load forecasting.

NO ON-SITE CUSTOMER GENERATION: The Contract Price and product set forth herein are conditioned on Customer's warranty to Suez that, as to the facility(ies) listed on Attachment A, it does not (i) own or operate on-site generation (except for emergency back-up generation used when Customer's local utility is not capable of delivering electricity), or thermal storage capabilities, and (ii) that it is not aware of any planned events or practices that will significantly impact the level and/or distribution of future load. Suez may make a written request for information during the term of this transaction related to any material load shift or reduction observed in comparison to the monthly consumption set forth herein. Customer shall respond to such request within ten (10) Business Days.

Independent System Operator (ISO) means the system operator that controls or governs the transmission and distribution system or any successor thereto for the location where the facility(ies) are physically located.

"Utility Related Charges" means tariff based charges or surcharges assessed by a local utility arising from or related to, including but not limited to, (i) transmission and distribution of energy (other than network integrated transmission service); (ii) stranded costs or transition costs and any other similar types of charges associated with the opening of the applicable state's electric market to competition; (iii) system reliability, rate recovery, future payback of under-collections, amortization, of above market purchases or energy load repurchases, public purpose programs and all similar items.

"Intermediary Fee" means an incremental fee or charge Customer pays for using a third party in the selection of Suez as its retail electric energy supplier.

"Capacity Price" means (i) the price as specified in Attachment A, Exhibit 1 in US dollars per kW-Month or (ii) the price as specified in Attachment A, Exhibit 1 in US dollars per kW-Day multiplied by the number of days in the relevant Billing Cycle.

"Capacity Settlement" means the monthly, spot or ISO derived Capacity Price for the applicable ISO and capacity pricing zone.

"Post-Term Charge" means a charge of \$0.045 per kWh of electric energy consumed.

"Stipulated Quantity" means the quantity of energy that is represented in Attachment A, Exhibit 3 and that Customer has agreed to purchase at the Stipulated Quantity Price for all hours of the applicable fixed term. Notwithstanding the Utility Transfer Date for any particular meter account, the Stipulated Quantity(s) shall begin on the Stipulated Quantity Start Date and end on the Stipulated Quantity End Date set forth in Attachment A, Exhibit 3. For the purpose of calculating the contract adjustment for any period where

**DRAFT**Customer Id:
PR #:
Agreement #: 1-20DKQW

	BUSINESS NAME CONTACT NAME	* BILLING CONTACT	GDF Suez Energy Resources NA, Inc. CONTACT	CUSTOMER PAYMENTS
NAME: ATTN:			GDF SUEZ Energy Resources NA, Inc. Attn: GSERNA Retail	<u>Wire payments to:</u> Mellon Bank <u>Account Title:</u> GDF SUEZ Energy Resources NA, Inc.
STREET ADDRESS:			1990 Post Oak Blvd.	<u>Account No.</u> 8-086-282
CITY, STATE, ZIP:			Houston, TX 77056	<u>ABA Number:</u> 031000037
PHONE #:			1-888-644-1014	<u>For payment by</u> <u>check, please</u> <u>send to:</u>
FAX #:			(713) 636-1922	GDF SUEZ Energy Resources NA P.O. Box 25237 Lehigh Valley, PA 18002-5237
EMAIL:			GSERNA.contract@gdfsuezna.com	

*Required Information

DRAFT - Not for Execution